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CASE NO. 80-1584

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1980

IN THE MATTER OF JAMES F. CRIST, JR.,

DEBTOR,

JAMES F. CRIST, JR., DEBTOR IN POSSESSION, APPELLANT,

PETITIONER

V.

JANE S. CRIST, APPELLEE,

RESPONDENT

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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I. SUMMARY OF ARGUMENT

While Petitioner has cast his presentation of questions to be reviewed by this Court in three parts, an examination of his Argument reveals that his objection to the ruling of the Fifth Circuit in Matter of Crist, 632 F.2d 1226 (Fifth Cir. 1980) is simply this: That by extending the benefits of Section 17a.(7) of the former Bankruptcy Act (11 U.S.C. §35a.(7)) to the excluded class (i.e., husbands), and thus protecting alimony, maintenance or support obligations owed by either spouse from discharge in bankruptcy, the court defeated the legislative purpose of that Section of the Bankruptcy Act. A careful and thoughtful examination of the purpose of this legislation reveals, however, that the Fifth Circuit's choice of remedy is not contrary to the intent and purpose of Congress in enacting

Section 17a.(7), but rather that this remedy clearly carries out and is consonant with the overall purpose and intent of Congress in enacting this provision; i.e., to exempt from discharge in bankruptcy those moral and legal obligations owed by a debtor to his dependents for alimony, support and maintenance.

Moreover, a review of the prior decisions of this Court on the question of remedial alternatives where a statute is declared unconstitutional because of underinclusiveness, demonstrates that the remedy chosen by the Fifth Circuit meets the criteria set out therein for choosing an appropriate remedy; i.e., (1) the remedy is consistent with Congress' overall legislative purpose in enacting the subject statute; (2) the remedy does not impose a hardship on the beneficiaries whom Congress plainly

meant to protect; and (3) the remedy does not infringe upon Congressional prerogatives.

II. ARGUMENT

A. THE LEGISLATIVE PURPOSE OF SECTION 17a.(7) IS CONSISTENT WITH THE REMEDY APPLIED BY THE FIFTH CIRCUIT

The earliest and most authoritative statement of the legislative purpose behind Section 17(a.7) is found in Wetmore v. Markoe, 196 U.S. 68, 77, 25 S.Ct. 172, 49 L.Ed. 390 (1904):

> [T]he Bankruptcy law should receive such an interpretation as will effectuate its beneficent purposes, and not make it an instrument to deprive dependent wife and children of the support and maintenance due them from the husband and father, which it ever has been the purpose of the law to enforce. Systems of bankruptcy are designed to relieve the honest debtor from the weight of indebtedness which has become oppressive and to permit him to have a fresh start in business or commercial life, free from the obligation and responsibilities which may have resulted from

business misfortunes. (Emphasis added.)

As Wetmore indicates, the overall purpose of the Bankruptcy Act was to relieve the debtor of oppressive indebtedness which may have resulted from business misfortunes and give him a fresh start in business, but not at the expense of his dependents to whom he owes a moral and legal obligation of maintenance and support. The key word in this pronouncement, and the one which reveals the actual and basic intent of this Statute, is "dependent".

The fact that the statute speaks specifically of maintenance or support of the wife and not the husband, does not betray a purpose to benefit women as opposed to dependent women or dependents in general for several reasons. First, it is historical fact that in 1903 when this section was first incorporated into

the Bankruptcy Act, few states, if in fact any at all, imposed alimony and support obligations on wives. Wives were in law, if not always in fact, dependents of their husbands. Accordingly, Congress had no need to address the alimony, maintenance and support obligations of wives because they had none under the law, and the use of the word "wife" in the Statute was merely a recognition of the then existing state of the law and of society.

Second, the Statute does not abruptly end with the word "wife" as the Petitioner has quoted it at page 3 of his Petition, but rather it reads as follows:

> A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as . . . (7) are for alimony due or to become due, or for maintenance or support or wife or child . . . . (emphasis added)

Thus, today, as in 1903, it was unquestioned that a man had the obligation to support and maintain his children. They were, and are today, his legal dependents. The fact that Congress grouped this obligation of support and maintenance of children together with that of support and maintenance of a wife in defining the exemption is a further demonstration of its focus on dependency as opposed to sex. A man's dependents under the law at the time this provision originally appeared in the Bankruptcy Act were his wife and children; and therefore, it was only natural for Congress to use the terminology it did in addressing the question of exemptions for obligations owed to dependents.

In fact the Court in Wetmore v. Markoe, supra, 196 U.S. 68, 77, clearly recognized and elucidated this state of

the law with respect to husband-wife relations when it stated:

> . . . the courts should not presume a design upon the part of Congress in relieving the unfortunate debtor to make the law a means of avoiding enforcement of the obligation, moral and legal, devolved upon the husband to support his wife and maintain and educate his children.

Thus, the overall purpose of Congress was to protect from discharge the obligations owed to legal dependents, who in 1903 (the year of enactment) happened to be the "wife" and "children" of a bankrupt husband and father. The recognition of this reality by use of the word "wife" cannot disguise the true purpose of the legislation.

Moreover, as indicated by the foregoing analysis, Congress did not have the concomitant purpose of declaring the obligations of a wife to her husband for alimony, support and

maintenance to be dischargeable as Petitioner contends. Wives did not have any such legal obligations which needed to be addressed in the Bankruptcy Act; and Congress, therefore, could not have intended to relieve them of nonexistent obligations. Accordingly, the Fifth Circuit's remedy does not contravene any legislative purpose of Congress to allow women to discharge such obligations; but rather it implements the true purpose of the legislation by extending relief to bankrupts of both sexes who have been adjudged entitled to and in need of alimony, maintenance and support by the domestic tribunals of the various States.

B. THE REMEDY APPLIED BY THE FIFTH CIRCUIT IS APPROPRIATE UNDER THE CRITERIA SET OUT FOR CHOOSING SUCH REMEDIES IN THE PRIOR DECISIONS OF THIS COURT.

1. The Remedial Outcome Is Consonant With Congress' Overall Purpose In Enacting The Statute

As pointed out by Petitioner, the Supreme Court in Califano v. Westcott, 443 U.S. 76, 99 S.Ct. 2655, 2663, 61 L.Ed.2d 382 (1979) has held that . . .

> Where a statute is defective because of underinclusiveness . . . there exist two remedial alternatives: a court may either declare [the statute] a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion. Quoting Mr. Justice Harlan's concurring opinion in Welsh v. United States, 398 U.S. 333, 361.

The choice of remedy is determined by several factors, not the least of which is the achievement of a remedial outcome consonant with the legislature's overall purpose in enacting the

statute. Wengler v. Druggists Mutual Insurance Company, 446 U.S. 142, 100 S.Ct. 540, 64 L.Ed. 2d 107 (1980). As demonstrated in Part II.A. of this Brief above, the overall legislative purpose of Congress as expressed in and through Section 17a.(7) of the Bankruptcy Act has been achieved by the remedy imposed by the Fifth Circuit.

2. The Remedy Does Not Impose A Hardship On The Intended Beneficiaries Of The Statute

Additionally, the remedy applied by a court should, if possible, be one that does not impose hardship on beneficiaries whom Congress plainly meant to protect. Califano v. Westcott, supra. Declaring this statute a nullity and depriving dependent wives of the benefit the Congress intended to bestow upon them would impose a severe hardship on such women. Moreover, it would

render a nullity countless State Court judgments and freely negotiated domestic settlement agreements obtained and entered into in reliance on their validity and future enforceability under the law prior to the effective date of the Bankruptcy Reform Act of 1978 (i.e., October 1, 1979). While there is no way of knowing how many wives may find themselves in the legal predicament of this Respondent, the growing number of cases which have been reported on this issue demonstrates that the hardship imposed by withdrawing the intended benefit would not be insubstantial.

On the other hand, extending the benefit of the Statute as the Fifth Circuit has done will not harm the intended beneficiaries at all; for as noted above, Congress never intended to relieve wives of their support obligations to their husbands.

3. The Remedy Does Not Infringe Upon Congressional Prerogatives

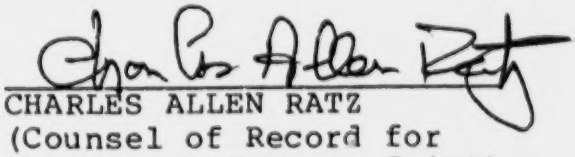
Finally, the court which is charged with selecting a remedy must take care not to infringe upon legislative prerogatives in its efforts to redress unconstitutional underinclusiveness. Califano v. Westcott, supra. The extension of the benefits of non-dischargeability by the Fifth Circuit was not such an infringement, but as pointed out above, it was merely an implementation of the overall purpose of Congress adjusted to suit the social and legal realities of 1980. Moreover, by the time the Fifth Circuit acted (December 17, 1980) Congress had already exercised any prerogative it might arguably have by enacting the Bankruptcy Reform Act of 1978 (effective October 1, 1979)

creating the precise remedy implemented by the Fifth Circuit. 11 U.S.C. §523(a)(5). Thus, far from usurping the power of Congress, the Fifth Circuit merely followed the lead of Congress in order to effectuate a just and equitable remedy in a situation in which Congress was then powerless to Act.

III. CONCLUSION

On these facts and for these reasons, Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Charles Allen Ratz, hereby certify that I am a member of the Bar of the Supreme Court of the United States, that I represent the party on whose behalf the foregoing Brief of Respondent in Opposition to Petition for a Writ of Certiorari to the Court of Appeals for the Fifth Circuit is filed, and that on April 15, 1981, I served counsel for all interested parties in the foregoing matter and the Solicitor General of the United States with the following number of copies by depositing those copies in the United States Mail in properly addressed envelopes with adequate first class postage thereon addressed to:

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All parties to be served have been served.

This 15TH day of April, 1981.

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